



# **LAW DEPARTMENT**

## **MEMORANDUM**

---

**PRIVILEGED AND CONFIDENTIAL**

April 13, 2009

TO: Mayor and Members of City Council  
FROM: Dan Wichmer, City Attorney  
RE: E-Mail Investigation

Per Mayor O'Neal's request, I am providing a written report that details my statements concerning the alleged breach by Greg of City Charter when he forwarded an e-mail to Tony Kelley (IAFF President), Mike Evans (SPOA), and other City personnel in December.

Save Our Springfield (SOS) has alleged that Greg violated the City Charter and ICMA guidelines when he forwarded an e-mail he received from Fred Ellison and Tom Martz concerning Police Fire Pension issues. The December 7, 2008 e-mail was unsolicited and was sent via a discussion forum. It also contained other people who were CC'd. Greg's message that went on the e-mail chain was "FYI, so that nobody gets blindsided by upcoming comments or suggestions from the Missouri Liberty Coalition." There were no other statements contained in the forwarded message.

SOS has alleged that Greg breached ICMA ethics guidelines and that he may have violated the City Charter. I have reviewed the matter and find no basis for the claim of a violation of City Code or City Charter. Since ICMA guidelines have no legal effect, I have not included that allegation in this memo since it has no bearing on my conclusion.

Section 6.11 of the City Charter states in part, "No appointive salaried officer or employee of the City shall use his official title or job designation in the form of any political activity calculated to favor or improve the chances of any political candidate or any person seeking or attempting to hold political office."

The e-mail in question was sent by a member of the public to a public employee. By definition, the communication was public. There could be no expectation of

confidentiality. In fact, any sort of attempt would violate the Sunshine Law. Further, there was no comment contained in any of the message that would indicate that any candidate was even being discussed. The time between sending the message and the general election was 5 months. In addition, the candidates whom SOS claims were affected all won in the February primary.

Finally, as City Manager, Greg is in charge of all City employees, whether they are members or non-members of an association or union. He has the right to communicate with any employee per his duties under the City Charter. In looking at the comments, I do not see how any part of the e-mail could be construed as a Manager doing anything more than communicating with his employees.